

Appeal Nos. 2023-1218, 2023-1274

UNITED STATES COURT OF APPEALS

for the

FEDERAL CIRCUIT

SUNOCO PARTNERS MARKETING & TERMINALS L.P.,
Plaintiff-Appellant,

v.

POWDER SPRINGS LOGISTICS, LLC,
MAGELLAN MIDSTREAM PARTNERS L.P.,
Defendants-Cross-Appellants.

Appeals from the United States District Court for the District of Delaware
in No. 1:17-cv-01390-RGA, Judge Richard G. Andrews

**APPELLANT'S UNOPPOSED MOTION FOR A
7-DAY EXTENSION OF TIME TO FILE OPENING BRIEF**

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Attorney of Record

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Marketing & Terminals L.P.*

March 14, 2023

FORM 9. Certificate of Interest

Form 9 (p. 1)
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 2023-1218, 2023-1274

Short Case Caption Sunoco Partners Marketing & Terminals L.P. v. Powder Springs Logistics, LLC

Filing Party/Entity Sunoco Partners Marketing & Terminals L.P.

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 01/13/2023

Signature: /s/ John R. Keville

Name: John R. Keville

FORM 9. Certificate of Interest

Form 9 (p. 2)
July 2020

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input type="checkbox"/> None/Not Applicable
Sunoco Partners Marketing & Terminals L.P.		Energy Transfer L.P.

☐ Additional pages attached

FORM 9. Certificate of Interest

Form 9 (p. 3)
July 2020

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☒ None/Not Applicable ☐ Additional pages attached

Winston & Strawn LLP	Eric S. Schlichter	Richard T. McCarty
Phillips, McLaughlin & Hall, P.A.	Megan C. Haney	David A. Bilson
John C. Phillips , Jr.		

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

☐ None/Not Applicable ☐ Additional pages attached

Sunoco Partners Marketing & Terminals L.P. v. U.S. Venture, et al., 1:15-cv-08178 (N.D. Ill. 2015)		
Sunoco Partners Marketing & Terminals L.P. v. U.S. Venture, Inc., No. 22-1899 (Fed. Cir. 2022)		

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☒ None/Not Applicable ☐ Additional pages attached

Pursuant to Federal Circuit Rules 26(b) and 27 and Federal Rule of Appellate Procedure 27, Plaintiff-Appellant Sunoco Partners Marketing & Terminals L.P. (“Sunoco”) respectfully requests a 7-day extension of time in which to file its Opening Brief, from March 22, 2023 to March 29, 2023. This is the third extension Sunoco has sought in this matter for its Opening Brief.

Defendants-Cross-Appellants have been consulted about this motion and have consented to the requested extension, so no opposition will be filed.

First, as explained in the Declaration of Michelle C. Replogle, several last-minute professional conflicts for Sunoco’s lead appellate counsel, John R. Keville, will make it difficult to complete an opening brief by March 22, 2023. Mr. Keville was very recently retained as lead trial counsel for a litigation at an advanced stage pending in the U.S. District Court for the Central District of California. *See MGA Entertainment Inc. v. Harris et al.*, No. 2:20-cv-11548-JVS-AGR (C.D. Cal. 2020). In that matter, the defendants filed a last-minute motion for summary judgment on March 13, 2023, which Mr. Keville and his team must respond to by March 20, 2023. This matter also has a full-day mediation scheduled for March 27, 2023, with a pre-mediation brief due by March 20, 2023. The matter is set for a jury trial beginning on May 9, 2023.

Second, in this appeal, Sunoco primarily seeks a reversal as to damages and a remand for a new trial on damages. As explained in Sunoco’s previously-filed

Motion for a 14-Day Extension (Dkt. No. 16), this case involves multiple damages-related rulings by the district court which Sunoco must address in its Opening Brief, as well as extensive evidence relating to damages that Sunoco must address. Moreover, Sunoco intends to appeal other rulings by the district court. *See* Dkt. No. 10 (Sunoco Docketing Statement). Given the complexity and voluminous nature of the record in this case, the extensive damages-related evidence and testimony, and the number of damages-related rulings that Sunoco must address, Sunoco has determined that it must narrow the issues that it will be addressing on appeal in order to meet this Court's of 14,000 word limit. Accordingly, Sunoco is seeking a 7-day extension of time to allow it to narrow the issues that it will raise on appeal and to present the issues and arguments necessary to the Opening Brief as succinctly as possible within the word limit.

Sunoco submits that good cause exists for the requested extension, and that the requested extension represents the minimum additional amount of time currently believed necessary to prepare and finalize its Opening Brief within this Court's word limit. Accordingly, Sunoco respectfully requests that the deadline for its opening brief be extended to and including March 29, 2023.

Dated: March 14, 2023

Respectfully submitted,

/s/ Michelle C. Replogle
Michelle C. Replogle
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(713) 431-7100

*Counsel for Appellant
Sunoco Partners Marketing &
Terminals L.P.*

DECLARATION OF MICHELLE C. REPLOGLE

1. I am a member of the bar of this Court and a partner in the Houston, Texas office of the law firm of Sheppard, Mullin, Richter & Hampton, LLP.

2. I have previously entered an appearance in this Court on behalf of Appellant Sunoco Partners Marketing & Terminals L.P. (“Sunoco”) in the subject appeals (Nos. 2023-1218, 2023-1274). I also was one of the counsel who represented Sunoco in the underlying proceeding held before the United States District Court for the District of Delaware.

3. I am making this declaration in support of Sunoco’s request for a 7-day extension of time to file its Opening Brief in this matter. I have knowledge of the facts set forth in Sunoco’s motion, and would be able to testify to them if called as a witness.

4. Sunoco’s Opening Brief is currently due on March 22, 2023, and this is Sunoco’s third request for an extension of time.

5. On March 14, 2023, counsel for Sunoco sent an email to counsel for Cross-Appellants regarding this motion and Sunoco’s request for a 7-day extension of time. The same day, by email, Cross-Appellants confirmed that they do not oppose this motion.

6. This is a complicated case involving multiple damages-related rulings and extensive evidence related to damages that Sunoco must address on appeal in its

Opening Brief. Sunoco's current draft of its Opening Brief substantially exceeds this Court's 14,000 word limit. Accordingly, the requested extension is necessary to prepare Sunoco's Opening Brief such that it will be within this Court's 14,000 word limit and such that it will be of the greatest assistance to the Court.

7. In addition, several last-minute professional conflicts for Sunoco's lead appellate counsel, John R. Keville, contributes to the difficulty of completing the Opening Brief by March 22, 2023. Mr. Keville was very recently retained as lead trial counsel for a litigation at an advanced stage pending in the U.S. District Court for the Central District of California. *See MGA Entertainment Inc. v. Harris et al.*, No. 2:20-cv-11548-JVS-AGR (C.D. Cal. 2020). In that matter, the defendants filed a last-minute motion for summary judgment on March 13, 2023, which Mr. Keville and his team must respond to by March 20, 2023. This matter also has a full-day mediation scheduled for March 27, 2023, with a pre-mediation brief due by March 20, 2023. The matter is set for a jury trial beginning on May 9, 2023.

I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on March 14, 2023.

/s/ Michelle C. Replogle
Michelle C. Replogle

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATIONS**

Case Number: 2023-1218, 2023-1274

Short Case Caption: Sunoco Partners Marketing & Terminals L.P. v.

Powder Springs Logistics, LLC

Instructions: When computing a word, line, or page count, you may exclude any items listed as exempted under Fed. R. App. P. 5(c), Fed. R. App. P. 21(d), Fed. R. App. P. 27(d)(2), Fed. R. App. P. 32(f), or Fed. Cir. R. 32(b)(2).

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

- ☒ the filing has been prepared using a proportionally-spaced typeface and includes 454 words.
- ☐ the filing has been prepared using a monospaced typeface and includes _____ lines of text.
- ☐ the filing contains _____ pages / _____ words / _____ lines of text, which does not exceed the maximum authorized by this court's order (ECF No. _____).

Date: March 14, 2023 Signature: /s/ Michelle C. Replogle

Name: Michelle C. Replogle

CERTIFICATE OF SERVICE

I hereby certify that, on March 14, 2023, I caused a copy of the foregoing document to be filed electronically with the U.S. Court of Appeals for the Federal Circuit using the CM/ECF system, which will send a notification to all counsel of record.

/s/ Michelle C. Replogle
Michelle C. Replogle